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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
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THE STATE OF ARIZONA, Respondent, v. FRED WILLIAM ANDREWS, Petitioner.	2 CA-CR 2008-0018-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20033191

Honorable Frank Dawley, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

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H O W A R D, Presiding Judge.

¶1 Following a jury trial, Fred William Andrews was convicted of possession of a dangerous drug and drug paraphernalia. The trial court suspended the imposition of

sentence and placed Andrews on probation with a condition he spend 280 days in jail. We affirmed Andrews's convictions on appeal but remanded the case for resentencing after we determined the court had failed to set forth a lawful basis for ordering the jail term.[1] *State v. Andrews*, No. 2 CA-CR 2004-0317 (memorandum decision filed Dec. 20, 2005). Andrews now challenges the court's denial of his subsequent petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. Although we grant review, we deny relief.

¶2 In his petition below, Andrews alleged his trial counsel had been ineffective for failing to file a motion to suppress evidence obtained as a result of a traffic stop that was ostensibly initiated because officers had observed a crack in the windshield of the vehicle in which Andrews was riding. He argued that the crack was too small for the officers to have seen it, and thus, the stop had not been supported by reasonable suspicion. The trial court held an evidentiary hearing on the petition. We view evidence therefrom in the light most favorable to upholding the court's ruling. *See State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993).

¶3 The officers who conducted the stop testified they had observed a crack in the vehicle's windshield as it traveled through a well-lit intersection, but they could not remember the size or exact location of the crack. Defense witnesses variously described the length of the crack as six or eight inches long and up to two feet long, extending approximately halfway across the windshield. They also maintained the crack had been thin,

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[1]The limited record available to us on review of this petition for post-conviction relief does not include the resentencing proceedings, nor are they at issue here.

close to the bottom of the windshield and did not obstruct the driver's view. Following testimony at the evidentiary hearing, Andrews argued that, even if the officers had seen the crack, they did not "have reasonable suspicion to believe that th[e] windshield" was inadequate. *See* A.R.S. § 28-957.01 (requiring vehicles "be equipped with an adequate windshield").

¶4 Following the hearing, the trial court found counsel had performed deficiently because a "colorable defense motion to suppress" had existed before trial, and "[n]o reasonable explanation had been offered to justify trial counsel's failure to file such a motion." The court denied Andrews's petition, however, because it found he had suffered no prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to prevail on ineffective assistance of counsel claim, defendant must show deficient performance and resulting prejudice); *State v. Lee*, 142 Ariz. 210, 213-14, 689 P.2d 153, 156-57 (1984) (same). It found that, although the stop appeared to have been pretextual, it was nonetheless supported by reasonable suspicion because officers had "observed a crack in the car's windshield as it traveled on the roadway" and were, therefore, "justified" in stopping the vehicle to determine whether the windshield was adequate under A.R.S. § 28-957.01. *See State v. Vera*, 196 Ariz. 342, ¶ 6, 996 P.2d 1246, 1247 (App. 1999) (determining that an officer had reasonable suspicion to stop a vehicle to investigate the adequacy of its windshield after observing an obvious crack in it). Consequently, the court concluded that it would not have suppressed the evidence, even if counsel had filed a suppression motion.

¶5 We review the trial court's decision for an abuse of discretion, which "'includes an error of law.'" *State v. Gonzalez*, 216 Ariz. 11, ¶ 2, 162 P.3d 650, 651 (App. 2007), *quoting State v. Rubiano*, 214 Ariz. 184, ¶ 5, 150 P.3d 271, 272 (App. 2007). "Although we review de novo whether the police had reasonable suspicion to justify an investigatory stop, we defer to the trial court's findings of fact and 'give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.'" *State v. Fornof*, 218 Ariz. 74, ¶ 5, 179 P.3d 954, 956 (App. 2008) (citation omitted), *quoting Ornelas v. United States*, 517 U.S. 690, 699 (1996); *see also State v. Berryman*, 178 Ariz. 617, 620, 875 P.2d 850, 853 (App. 1994) (in reviewing denial of post-conviction relief, "[w]e examine a trial court's findings of fact after an evidentiary hearing to determine if they are clearly erroneous").

¶6 In his petition for review, Andrews does not challenge the trial court's finding that the officers in this case actually observed the crack in the windshield before stopping the vehicle. He contends only that the officers had no reason to believe the crack rendered the windshield inadequate. Andrews interprets § 28-957.01 to require a windshield that is "safe, functional, equipped with safety glass, and free of visual obstructions." Assuming that Andrews's interpretation of the word "adequate" as used in § 28-957.01 is correct, we conclude the court correctly found the officers in this case reasonably suspected the windshield's inadequacy.

¶7 Viewing the evidence in the light most favorable to the trial court's ruling, the officers observed a substantial crack approximately two-and-one-half feet long extending

from the driver's side of the vehicle approximately halfway across the windshield. The officers reasonably could have suspected such a crack presented a safety hazard either by rendering the window unsound or by obstructing the driver's view. Andrews claims the court "credited the defense testimony that the crack was very thin and away from the driver's line of vision," but his contention is unsupported by the record. The court actually stated that "several defense witnesses described the windshield crack as relatively thin and somewhat away from the driver's side of the car." The court rejected the witnesses' contentions that the crack was invisible from the officers' vantage point, finding both officers had actually seen the crack. And it did not find that the driver had had an obviously unobstructed view around the crack. As the court noted, we decided in *Vera* that officers are "not required to determine the adequacy of [a] windshield before" stopping a vehicle. 196 Ariz. 342, ¶ 6, 996 P.2d at 1247-48. Rather, they may conduct a stop "to investigate" whether an "obvious[] crack[]" renders the windshield inadequate. *Id*.

¶8 The trial court did not abuse its discretion in denying Andrews post-conviction relief. Therefore, although we grant review, we deny relief.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge